

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION
2:06cv24**

JAMES E. McCALL,)	
)	
Plaintiff,)	
)	
Vs.)	ORDER
)	
TOWN OF HIGHLANDS, NORTH)	
CAROLINA; and TOWN OF)	
HIGHLANDS POLICE DEPARTMENT,)	
NORTH CAROLINA,)	
)	
Defendants.)	
)	

THIS MATTER is before the court on defendants' Motion to Dismiss and plaintiff's orally renewed Motion for Leave to File First Amended Complaint. Counsel for plaintiff has communicated to the court that while counsel for defendants does not consent to amendment of the Complaint, defendants will not oppose amendment. The court has reviewed the arguments that were earlier filed both in support of the Motion to Dismiss and in support of the first Motion for Leave to File First Amended Complaint. Based on such arguments, it is apparent to the court that appropriate factual allegations that could support subject matter jurisdiction were omitted from the Complaint by plaintiff due to the fact that he was then proceeding *pro se*. Finding that good cause has been shown under Rule 15, Federal Rules of Civil Procedure, and that the defendants will not be unduly prejudiced, the oral renewed Motion for Leave to File First Amended Complaint will be allowed.

ORDER

IT IS, THEREFORE, ORDERED that

- (1) plaintiff's orally renewed Motion for Leave to File First Amended Complaint is **GRANTED**, and plaintiff is granted leave to file his First Amended Complaint within 10 days of the filing of this Order; and
- (2) inasmuch as an Amended Complaint will be filed, defendants' Motion to Dismiss (#2) is **DENIED** without prejudice as **MOOT**.

Signed: December 4, 2006

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

